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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY – NEWARK VICINAGE**

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Joseph H. West,

Plaintiff,

v.

ALL AMERICAN SPORTS SHOP,  
VENUS KNITTING MILLS, INC. and  
PRO-REF SPORTSWEAR,

Defendants.

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ALL AMERICAN SPORTS SHOP,

Third-Party Plaintiff,

v.

EFINGER SPORTING GOODS CO.,

Third-Party Defendant.

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**Civil Action No. 06-CV-5319 (SDW)**

**ANSWER, AFFIRMATIVE DEFENSES, DEMAND FOR TRIAL BY JURY  
AND THIRD-PARTY COMPLAINT OF DEFENDANT ALL AMERICAN  
SPORTS SHOP**

Defendant, All American Sports Shop, through its undersigned counsel, hereby responds  
to the Complaint as follows:

1. Admitted.
2. Admitted that Defendant does business at this address but denies the remainder of the allegations in this Paragraph.
3. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
4. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
5. Admitted.
6. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
7. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
8. Defendant admits the patent was issued but denies the remainder of the allegations in this paragraph.
9. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
10. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
11. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
12. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.

13. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
14. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
15. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
16. Defendant admits that it has sold such productS in the past but denies the remainder of the allegations in this paragraph.
17. Admitted.
18. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
19. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
20. Denied.

**FIRST COUNT**  
**PATENT INFRINGEMENT**

21. Defendant repeats its responses to the allegations in Paragraphs 1 to 20 as if more fully set forth herein.
22. Denied
23. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.
24. Denied

25. Defendant is without knowledge sufficient to form a belief as to the allegations of this paragraph and denies the same and leaves Plaintiff to his proofs.

**SECOND COUNT**  
**UNFAIR COMPETITION**

26. Defendant repeats its responses to the allegations in Paragraphs 1 to 25 as if more fully set forth herein.

27. Denied

WHEREFORE, Defendant denies that Plaintiff is entitled to any of the relief requested in the Complaint and demands that the Court dismiss the Complaint with prejudice, award Defendant its reasonable costs and attorney's fees and for such further relief as the Court deems equitable and proper.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Defendant has not infringed the patent-in-suit.

**THIRD AFFIRMATIVE DEFENSE**

Upon information and belief, the patent-in-suit is invalid under 35 U.S.C. 102, 103 and/or 112.

**FOURTH AFFIRMATIVE DEFENSE**

Upon information and belief, the patent-in-suit is unenforceable.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff comes to Court with unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

The Complaint is barred in whole or in part by the equitable Doctrines of Waiver, Laches and/or Estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's damages, if any, were caused by a third-party over whom Defendant has no control.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant's infringement, if any, was not willful.

**THIRD-PARTY COMPLAINT**

Defendant, All American Sport Shop, by way of Third-Party Complaint, alleges as follows:

1. Third-Party Defendant, Efinger Sporting Goods Co., is, upon information and belief, a New Jersey corporation doing business at 513 West Union Avenue, Bound Brook, New Jersey 08805.
2. Third-Party Plaintiff All American Sports Shop, purchased the items accused of infringement herein by Plaintiff from Efinger Sporting Goods Co.
3. If the Court determines that the accused item infringes any of Plaintiff's rights, then Efinger owes Defendant/Third-Party Plaintiff, All American Sports Shop, a duty of indemnification/contribution.

WHEREFORE, Defendant/Third-Party Plaintiff demands judgment against Efinger for its damages, costs, reasonable attorney's fees and for such other relief as the Court deems equitable and proper.

**DEMAND FOR TRIAL BY JURY**

Defendant/Third-Party Plaintiff hereby demands trial by jury on all issues so triable.

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

Pursuant to Local Civil Rule 11.2, it is stated that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration or administrative proceeding to the best of our knowledge or belief. Also, to the best of our knowledge or belief, no other action, administrative proceeding or arbitration is contemplated.

MANDEL & PESLAK. LLC

Dated: February 26, 2007

By: /s/ Arthur M. Peslak  
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